

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1019341/ U# 08-30

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**TO:** Chief Administrator  
Independent Police Review Authority

**FROM:** Investigator Linda Franko # 116

**SUBJECT:** 1019341 / U# 08-30

**REFERENCE:** RD # HP-529082, Aggravated Assault of a Police Officer  
With a Handgun

**DATE/TIME:** 22 August 2008, 1956 hours

**LOCATION:** 651 East 89<sup>th</sup> Street, in the alley

**WEATHER  
CONDITIONS:** Warm, Clear, and Nightfall

**OFFICER  
INVOLVED:** Officer Zachary Rubald, Star # 14540; M/W; Employee # [REDACTED];  
DOB: [REDACTED] 76; DOA: 29 Apr 02; Full Uniform, On-Duty; Unit 006

**OFFICER'S  
INJURIES:** None

**OFFICER'S  
WEAPON:** Sig Sauer Model P226; Serial # [REDACTED] 7; 9MM; Registration  
# [REDACTED]; One (1) live round in the chamber; 13 rounds in the  
magazine; Two (2) fired rounds. The firearm was on loan to the officer  
following a previous shooting incident.

**SUBJECT:** Martinez Winford; M/B; DOB: 07 Feb 92; 844 East 84<sup>th</sup> Street, Chicago,  
Illinois; IR# 1855379

**SUBJECT'S  
INJURIES:** One (1) Fatal Gunshot Wound to the right side lodged near the heart

**INITIAL  
INCIDENT:** Shots Fired by Unknown Offenders  
Beat 633

**SUMMARY OF INCIDENT AND INVESTIGATION:**

**IPRA Investigator Kimberly Reynolds** responded to the police involved shooting on 22 Aug 08, at approximately 1956 hours. Investigator Reynolds was a participant of the Roundtable Panel regarding the preliminary investigation of the police involved shooting. Investigator Reynolds submitted a **report** of the following interviews:

**Detective Brian Forberg** # 21249, Area 2 Violent Crimes gave the following synopsis of the police involved shooting to the Roundtable Panel: On 22 August 2008, Officer Zachary Rubald and his partner, Officer Miguel Romero, were working Beat 634. The officers were in the vicinity of 89<sup>th</sup> and Cottage Grove when they monitored a broadcast of "Shots Fired" in the area of 89<sup>th</sup> and St. Lawrence. Officers Rubald and Romero traveled westbound on 87<sup>th</sup> Street and then turned onto St. Lawrence. The officers came upon a group of citizens who directed the officers to go eastbound on 89<sup>th</sup> Street. Upon arrival on 89<sup>th</sup> Street, the officers observed a group of black males walking eastbound near Langley Ave. Officers Rubald and Romero stopped and exited their vehicle to conduct a street stop. At that time, one of the black males, now known to be Martinez Winford, broke away from the group and fled on foot. Mr. Winford ran southbound on Langley Ave. and then westbound into an alley with Officers Rubald and Romero in pursuit in the squad car. Once the squad car entered the mouth of the alley, Mr. Winford removed a firearm from his waistband. Mr. Winford placed his hand on the top of a fence and pointed the firearm in the direction of the squad car. The squad car stopped and passenger Officer Rubald opened the squad car door and while seated in the vehicle fired two rounds in the direction of Mr. Winford. Simultaneous to Officer Rubald firing in the direction of Mr. Winford, Mr. Winford jumped up and went over the fence and fell to the ground. The firearm, held by Mr. Winford dropped to the ground. Officer Rubald handcuffed Mr. Winford, and secured the recovered firearm. Officer Romero radioed for EMS and stood guard over the firearm. CFD transported Mr. Winford to Christ Hospital where he was pronounced by Dr. Salzmann at 2034 hours. (Att. 5)

**Officer Miguel Romero** gave the following account of the incident to the Roundtable Panel: Officer Romero with partner, Officer Zachary Rubald assigned to Beat 634 and were touring the vicinity of 87<sup>th</sup> and Cottage when they responded to an OEMC broadcast of "Shots Fired" in the area of 87<sup>th</sup> and St. Lawrence. When the officers arrived in the vicinity of 89<sup>th</sup> and Langley, Officer Romero observed a large group of black males walking eastbound on 89<sup>th</sup> Street toward Langley. Officer Romero stopped the squad car at 8902 S. Langley and one of the black males, now known to be Martinez, Winford wearing black clothing, fled on foot from the group. Officer Romero and Officer Rubald pursued Mr. Winford in the squad car. Mr. Winford ran westbound in the alley and pursued by Officers Rubald and Romero in the squad car. Beat 633 arrived on the scene and took second position behind the squad car of Officers Romero and Rubald. Officer Romero then heard Officer Rubald yell, "Gun." Officer Romero observed Mr. Winford grab onto the top of the fence with one hand and point a handgun at the officer with the other hand. Officer Rubald still in the sitting position in the passenger seat of the squad car fired two shots at Mr. Winford, striking him. Mr. Winford continued over the fence and fell to the

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ground and his handgun fell several feet from him. Officer Rubald secured Mr. Winford and Officer Romero radioed for EMS and notified OEMC of the incident. (Att. 5)

**Officer Zachary Rubald** gave the following account of the incident to the Roundtable Panel: Officer Rubald stated that he and Officer Miguel Romero were working Beat 634 and responded to an OEMC simulcast of "Shots fired" in the vicinity of 89<sup>th</sup> and St. Lawrence. When the officers arrived in the area of 8902 S. Langley, they observed a large group of black males. As the officers prepared to exit their squad car to conduct a street stop, one of the black males, now known to be Martinez Winford, fled on foot southbound as Beat 633 arrived on the scene. Officers Rubald and Romero gave chase in their squad cars and turned into the alley after Mr. Winford. Officer Rubald then observed Mr. Winford produce a weapon from his front waistband. Officer Rubald yelled "Gun!" Mr. Winford placed his left hand on the top of the fence and as he went over the fence, Mr. Winford turned and pointed the firearm at the officers. Officer Rubald while inside the squad car on the passenger seat fired two shots striking Mr. Winford. Mr. Winford continued over the fence and fell to the ground. The weapon Mr. Winford held in his hand fell several feet from his body. Officer Rubald secured Mr. Winford, secured Mr. Winford's firearm and EMS was called to the scene. (Att. 5)

**Detective McLain** reported to the Roundtable Panel that he went to Christ Hospital and interviewed Dr. Salzmann. Dr. Salzmann informed Detective McLain that Mr. Winford sustained a gunshot wound to the right side of his torso and the bullet lodged near the heart area. Dr. Salzmann pronounced Mr. Winford on 22 Aug 08, at 2034 hours. A gunshot residue test was performed on Mr. Winford's hands. (Att. 5)

**Acting ADS Commander Anthony Riccio** was the on call Deputy on 22 Aug 08 and submitted a report regarding the police involved shooting. Commander Riccio essentially reported a similar account of what was reported to him as indicated in the report from IPRA Investigator Reynolds. In addition, Acting ADS Commander Riccio indicated in his report that during the walk-through conducted separately with Officers Rubald and Romero, the officers provided similar accounts of the incident. Both accounts provided by the officers were consistent with the physical evidence. Acting ADS Commander Riccio further indicated in his report that Officers Rubald and Romero acted properly, and incompliance with all Department orders. The use of force was lawful and consistent with Department directives. (Att. 4)

In a statement with Detective Brian Forberg # 21249 and in the presence of ASA Aidan O'Conner, on 23 Aug 08, [REDACTED] stated that he is sixteen-years-old (16) and attends C.V.S. High School and he lives near 90<sup>th</sup> and Langley. Mr. [REDACTED] further stated that he was walking on Langley from the bus and came upon a group of eight "guys" that were also walking on Langley. The group of "guys" were unknown to Mr. [REDACTED] and they continued to walk in front of him. When Mr. [REDACTED] was near 89<sup>th</sup> Street, he observed a blue and white squad car. The group of "guys" in front of him ran and he ran to the southwest side of 89<sup>th</sup> and Langley. Mr. [REDACTED] then observed one of the "guys" from the group run south on Langley ahead of the squad car. The squad car turned right, going southbound on Langley. The "guy" then ran in the alley and the squad car also turned into the alley following behind the "guy." Mr. [REDACTED] continued to walk westbound on 89<sup>th</sup> Street when he heard two (2) shots fired from the direction of the alley.

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Mr. [REDACTED] then went inside the third apartment building from the corner. Mr. [REDACTED] did not see the "guy" or the officers after they went in the alley. Mr. [REDACTED] only heard the two shots fired and was not a witness to the actual shooting. (Atts. 49-50).

**The Original Case Incident Report of Aggravated Assault of a Police Officer with a Handgun, Case Supplementary Report, TRR, Officer's Battery Report and Arrest Report of [REDACTED]** indicate that Officers Rubald and Romero were working Beat 634 and responded to a call of "Shots fired" in the area of 87<sup>th</sup> Place and St. Lawrence. Officers Rubald and Romero were directed by citizens to a group of black males walking eastbound on 89<sup>th</sup> Street. Martinez Winford observed the officers and ran into an alley with a firearm in his hand. Officers Rubald and Romero gave chase in the squad car and also turned into the alley that Mr. Winford in. Mr. Winford then turned and pointed the firearm at the officers who were seated inside the squad car. Officer Rubald while still inside the squad car fired two rounds through the open squad car window. Mr. Winford fell to the ground and dropped the handgun. Officers Rubald and Romero discovered that Mr. Winford had been injured and immediately notified OEMC and called for EMS. Mr. Winford was transported to Christ Hospital where he was pronounced dead at 2034 hours. Mr. Winford's handgun, a Cal Tech, model P-11, 9mm, Luger semiautomatic pistol, serial # [REDACTED], was recovered and inventoried. Additional units on the scene observed the subject, now known to be [REDACTED], who had been walking with Mr. Winford, run inside the building at 651 E. 89<sup>th</sup> Street. Officers secured the building and located Mr. [REDACTED] in the hallway. Mr. [REDACTED] was alone in the building and admitted that there was no one else with him. Mr. [REDACTED] also admitted that he did not live at 651 E. 89<sup>th</sup> Street and a handgun, a Colt, model Automatic, 25 caliber Auto semiautomatic pistol, serial # [REDACTED], was recovered in close proximity to Mr. [REDACTED]. (Atts. 9-12, 44 & 62)

**The Case Supplementary Report of Justifiable Homicide** of Martinez Winford gave essentially a similar account of the incident as indicated in the Original Case Incident Report of Aggravated Assault of a Police Officer with a Handgun. In addition, the report details the canvass conducted by detectives of Area 2. The majority of the persons interviewed by detectives were either not home at the time of the incident or they did not see or hear anything. Several persons on the canvassed route reported that they heard two shots fired and others heard one or three shots fired. (Atts. 43 & 51)

**Photographs of the crime scene** taken by Forensic Investigators show the chain link fence and garbage cans behind 651 East 89<sup>th</sup> Street. Marker #1 shows an expended shell from Officer Rubald's firearm near two garbage cans. Marker # 2 shows the firearm held by Mr. Winford when he fell over the chin link fence. Marker # 3 shows where Mr. Winford landed on the ground. (Att. 27)

**The OEMC Event Query and Audio Transmissions** indicate that several individuals called "911" and reported seeing a group of boys running and then hearing two shots fired. A caller reported a police car in the alley behind 8902 S. Langley. The shots fired by the police are reported and the EMS and supervisor respond to the scene of 651 E. 90<sup>th</sup> Place. (Atts. 13 & 48)

**A canvass** of the vicinity of 651 E. 89<sup>th</sup> Street was conducted and was met with negative results of finding witnesses to the police involved shooting. (Att. 22)

The **Chicago Fire Department Ambulance Report** indicates that Paramedics responded to a gunshot victim at 651 E. 89<sup>th</sup> Street. Upon arrival, the Paramedics were told by police that the unknown person, now known to be Martinez Winford, was shot by police. Mr. Winford was found lying on his back in a gangway with a handgun nearby. Mr. Winford was unresponsive with a gunshot wound entrance under the right armpit, mid-chest. The exit wound appears to be center of back and no other wounds were noted. Mr. Winford vitals were at 0 when he was transported to Christ Hospital. (Att. 19)

The **medical records** of Martinez Winford from Christ Hospital show that he was admitted on 22 Aug 08, at 2027 hours. Mr. Winford was brought in on a backboard with CPR in progress. Mr. Winford was hooked up to a monitor and CPR continued with 0 pulses. Mr. Winford was cold and clammy and was pronounced by Dr. Steven Salzman on 22 Aug 08, at 2034 hours. The report also indicates that Mr. Winford sustained a gunshot wound to the right flank. (Att. 25)

The **Medical Examiner's report** indicates that Martinez Winford sustained an entry gunshot wound on the right chest. The wound coursed from right to left, and upward. examination of the skin about the wound of entrance reveals no evidence of close range fire. This wound course contributed to bleeding within the right and left chest cavity each totaling approximately 750cc of liquid blood. A deformed medium caliber copper jacketed hollow point bullet was recovered within the musculature of the left pectoralis muscle. The toxicology result of Mr. Winford's blood was classified as negative for alcohol, marijuana, and cocaine. The cause of Mr. Winford's death is a gunshot wound to the chest. The manner of Mr. Winford's death is homicide. (Att. 39)

A report from the Illinois State Police ("ISP"), Division of Forensic Services, dated 16 Oct 08, indicates that Officer Rubald's 9mm Sig Sauer Model P226; Serial # [REDACTED]; semiautomatic pistol was found to be in firing condition and test fired. The firearm displays rifling characteristics of six lands and grooves with a right hand twist.

The report further indicates that the Cal Tech, model P-11, 9mm, Luger semiautomatic pistol, serial # [REDACTED], was found to be in firing condition and test fired. The Cal Tech, model P-11 displays rifling characteristics of six lands and grooves with a right hand twist.

The report also indicates that the Colt, model Automatic, 25 caliber Auto semiautomatic pistol, serial # [REDACTED] was received in multiple pieces. The firearm was assembled, found to be operable and test fired. The firearm displays rifling characteristics of six lands and grooves with a left hand twist. (Att. 42)

A **Civil Suit** was filed on 15 Apr 09 by [REDACTED] individually and as Special Administrator of the Estate of Martinez Winford now deceased against the City of Chicago and Chicago Police Officers Zachary Rubald and Miguel Romero. The civil suit alleged that Officer Zachary Rubald shot Martinez Winford without lawful cause or justification. The civil suit further alleged that Officer Zachary Rubald's wanton actions caused Martinez Winford's untimely wrongful death. (Att. 52)

**An emergency motion was filed and granted in the United States District Court for the Northern District of Illinois, Eastern Division** on 13 April 2011, to impound and preserve evidence namely one City of Chicago garbage can with serial number 152526. The motion further details that the City of Chicago garbage can revealed an entry and exit bullet hole in photographs taken of the crime scene on 22 August 2008. The City of Chicago garbage can with serial number 152526 was inventoried and preserved on 26 April 2011 under Inventory number 12300890.

The Illinois State Police Forensic Science Center at Chicago did not conduct an examination of the City of Chicago garbage can with serial number 152526. Based on the length of time between the incident on 22 August 2008 and the time the garbage can was inventoried on 26 Apr 11, an examination of the City of Chicago garbage can with serial number 152526 was not conducted by the Illinois State Police Forensic Science Center at Chicago. (Att. 72)

**Officers Zachary Rubald and Miguel Romero** provided statements to the IPRA on 03 Feb 11 and 15 Feb 11 respectively, and their accounts were essentially consistent with the accounts they provided to the Roundtable Panel and to Area 2 Detectives on 22 Aug 08. (Atts. 55-56, 58-59)

#### **CONCLUSION AND FINDING:**

This investigation found that Officer Zachary Rubald's use of deadly force was in compliance with Chicago Police Department policy and Illinois State statutes. According to the Chicago Police Department's General Order 02-08-03, III:

- A. "a sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:
  1. to prevent death or great bodily harm to the sworn member or to another person, or:
  2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
    - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
    - b. is attempting to escape by use of a deadly weapon or;
    - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay."

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Officer Zachary Rubald and Officer Miguel Romero were on routine patrol when they monitored a simulcast of "Shots fired" in the vicinity of 89<sup>th</sup> and St. Lawrence. Officers Rubald and Romero responded to the call and observed a group of black males in the vicinity of where the shots were fired. When Martinez Winford observed the officers, he broke from the group and fled on foot. Officers Rubald and Romero pursued Mr. Winford in their vehicle. Mr. Winford ran in the alley behind the building at 651 East 89<sup>th</sup> Street and the squad car Officers Rubald and Romero were in followed him. Once the squad car entered the mouth of the alley, Mr. Winford removed a firearm from his waistband and pointed the firearm at the officers who were in full uniform and in a marked squad car. The squad car stopped and passenger, Officer Rubald, while seated in the squad car fired two rounds through the open passenger window in the direction of Mr. Winford. Simultaneous to Officer Rubald firing two rounds in the direction of Mr. Winford, Mr. Winford placed his left hand on top of the fence, pointed the firearm he held in his right hand, in the direction of the officers, jumped up, continued to point the gun in the direction of the officers, went over the fence and fell to the ground. The weapon Mr. Winford held in his hand fell several feet from where he landed on the ground. The Medical Examiner noted that Mr. Winford sustained an entry gunshot wound on the right chest area. The wound coursed from right to left and upward and the bullet lodge within the musculature of the left pectoralis muscle. Examination of the skin about the wound of entrance revealed no evidence of close range fire. Several ear witnesses called "911" and reported that they heard gunshots in the vicinity of 8902 S. Langley. Witness/arrestee [REDACTED] observed Martinez Winford flee from the group of "guys" he was with and run in the alley with Officers Rubald and Romero in vehicle pursuit. Shortly after the squad car traveled into the alley, he heard two shots fired. The accounts provided by Officers Rubald and Romero, witness/arrestee [REDACTED], the Medical Examiner's report, and the calls to "911" are consistent with the crime scene and forensic evidence. Without uncertainty, Officer Rubald's actions were consistent with Department policy to stop assailant Martinez Winford from fleeing into the community while armed and dangerous. Therefore, based on the totality of the circumstances surrounding this incident, Officer Zachary Rubald was justified in the use of deadly force against Martinez Winford.

  
#116  
Investigator Linda Franko # 116

APPROVED:

  
IPRA Supervisor

Summary prepared and typed by Investigator Alice Chico # 105.